

v. 2787

No. 13695

United States
Court of Appeals
For the Ninth Circuit.

JOHN FOSTER DULLES, Secretary of State of
the United States of America,

Appellant,

vs.

LEE GNAN LUNG, by his next friend Lee Kut,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.



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JOHN FOSTER DULLES, Secretary of State of
the United States of America,

Appellant,

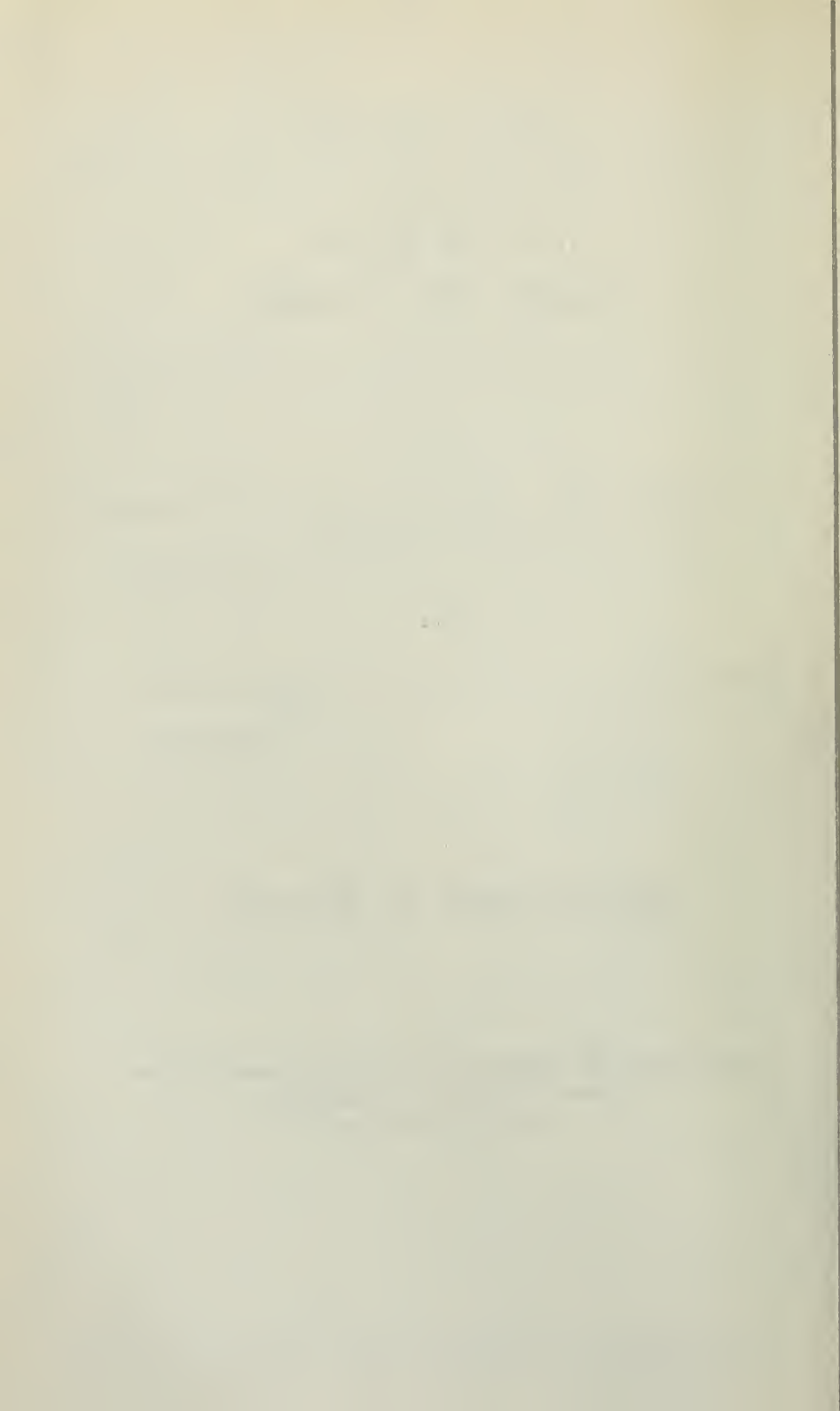
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

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Seattle 4, Washington,
Attorney for Appellant.

JOHN E. BELCHER,
Asst. United States Attorney,
1017 U. S. Court House,
Seattle 4, Washington,
Attorney for Appellant.

EDWARDS E. MERGES,
1510-1511 Smith Tower,
Seattle, Washington,
Attorney for Appellee.

In the United States District Court for the Western
District of Washington, Northern Division

No. 3010

LEE GNAN LUNG, by His Next Friend, LEE
KUT,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the
United States of America,

Defendant.

COMPLAINT

Comes Now Lee Gnan Lung, by his next friend, Lee Kut, and for cause of action against the defendant, complains and alleges as follows:

I.

That the plaintiff, Lee Gnan Lung, is a citizen of the United States and brings this action through his father and next friend, Lee Kut, also a citizen of the United States and a resident of Seattle, King County, Washington.

II.

That the defendant, Dean G. Acheson, is the duly appointed, qualified and acting Secretary of State of the United States of America; that the American Consul General at Hong Kong is an officer of the United States and an executive official of the Department of State of the United States, acting

under and by the direction of the defendant, Dean G. Acheson, as Secretary of State.

III.

That the jurisdiction of this action is conferred upon this Court by Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 3 U.S.C. 903.

IV.

That the plaintiff, Lee Gnan Lung, was born in China at Wah Lum Village, Hoy Shan District, on September 15, 1926, (Chinese date) and is at the present time temporarily residing in Hong Kong, China, awaiting the issuance of a travel document to enable him to come to the United States.

V.

That the plaintiff, Lee Gnan Lung, is a citizen of the United States under Section 1993 of the Revised Statutes, 8 U.S.C. 6 First Edition; and that plaintiff became a citizen of the United States at birth pursuant to the act of May 24, 1934, 8 U.S.C. 6, First Pocket Edition, as amended by Section 201(g) of the Nationality Act of 1940, 8 U.S.C. 601.

VI.

That Lee Kut, the father of plaintiff, is also a citizen of the United States, as aforesaid, and that his citizenship has been recognized and conceded by the Immigration Service at the Port of Seattle, Washington, on several occasions and that the

permanent residence of the plaintiff's father, Lee Kut, is the City of Seattle, where he is engaged in the laundry business, and the plaintiff has and claims his permanent residence in the City of Seattle, King County, Washington in the Northern Division of the Western District of Washington, where the permanent residence of his said father is located and the plaintiff claims the right of entering the United States of America as a national and citizen of said nation.

VII.

That the plaintiff's father, Lee Kut, was legally and lawfully married to the plaintiff's mother, Lew Shee, on November 28, 1925, (Chinese date) and that the plaintiff was the lawful issue of said marriage.

VIII.

That in February of 1951 or approximately one year ago, the plaintiff's father, Lee Kut, caused to be prepared an identification affidavit stating his relationship to the plaintiff and all the particulars concerning him and that said identification affidavit was prepared for the purpose of securing from the American Consul General in Hong Kong, a travel document to enable the plaintiff to travel to the United States; and that said identification affidavit was filed with said American Consul shortly thereafter so the plaintiff would be eligible to purchase transportation to the United States in order to apply for admission here under the immigration laws as a citizen thereof, but that the Consul failed

and neglected to take any action upon said application and on October 11, 1951, wrote a letter, stating that plaintiff had been interviewed at the office of the American Consul but had not presented sufficient evidence to enable the Consul to issue him a final document and that it was indefinite when any travel document would be issued because there were approximately 1800 cases ahead of the plaintiffs but that there is in truth and in fact no good reason for such delay because the plaintiff has submitted adequate and competent evidence of his citizenship and right to come to the United States and that the American Consul, upon information and belief of the plaintiff, has no intention of issuing the plaintiff a travel document and that a year's time is an unreasonable delay inasmuch as the plaintiff's right to a travel document could be determined on a basis of the affidavits submitted and that in any event, the plaintiff is subject to examination by the United States immigration authorities but by reason of the American Consul's action aforesaid, the plaintiff has been stoped from coming to the United States and from applying to and presenting his proof to the Immigration Service at a port of entry in the United States, and that the said action of the American Consul has been referred or appealed to the Secretary of State upon information and belief of plaintiff. That plaintiff is informed and believes and therefore alleges that no action will be taken upon said application and that if any action is taken on it, it will be unfavorable, and that plain-

tiff has no other remedy at law or otherwise except the present one.

IX.

That the plaintiff is a citizen of the United States as aforesaid, claims United States nationality of citizenship and brings this action in good faith and on a substantial basis.

Wherefore, plaintiff prays for an order and judgment of this court as follows:

1. That an order, directed to the defendant, Dean G. Acheson, issue to provide that the plaintiff be granted a certificate of identity and/or travel document in order that he may be able to obtain transportation to the United States and be admitted under bond in the sum of Five Hundred Dollars (\$500.00) for the purpose of prosecuting his claim of citizenship in this court.

2. That a decree be entered herein adjudging the plaintiff to be a citizen of the United States.

3. That the plaintiff be granted such other and further relief as may be just and equitable in the premises.

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

State of Washington,
County of King—ss.

Lee Kut, being first duly sworn, on oath deposes and says: That he is the next friend of the plain-

tiff in the above-entitled action; that he has read the foregoing complaint, knows the content thereof and believes the same to be true.

/s/ LEE KUT.

Subscribed and sworn to before me this 18th day of February, 1952.

/s/ EDWARDS E. MERGES,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed February 19, 1952.

[Title of District Court and Cause.]

MOTION AND AFFIDAVIT FOR AN ORDER
TO SHOW CAUSE

Comes Now Lee Kut, the father and next friend of Lee Gnan Lung, the plaintiff in the above-entitled cause, and respectfully moves the Court for an order directed to defendant, Dean G. Acheson, to show cause, if any he may have, why he should not issue forthwith a Certificate of Identity or travel document to Lee Gnan Lung, to enable the said Lee Gnan Lung to obtain transportation and admittance to the United States, or that the defendant, the said Dean G. Acheson, be held in contempt of court for his failure and refusal to issue such document.

This motion is based upon the records and files herein, upon the affidavit of Lee Kut, and upon Section 503 of the Nationality Act of 1940, 3 U.S.C. 903.

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

State of Washington,
County of King—ss.

Lee Kut, being first duly sworn, on oath deposes and says: That he is a citizen of the United States and has brought the above-entitled action on behalf of his son, Lee Gnan Lung; that said action was filed in the above-entitled court on or about February 19, 1952, served on the United States of America by serving J. Charles Dennis, United States Attorney, on or about February 20, 1952, and that immediately thereafter, in accordance with Sec. 503 of the Nationality Act of 1940, a certified copy of said complaint, containing the sworn application that the claim of nationality presented in the action was made in good faith, was served upon and delivered to the American Consul in Hong Kong, and that upon information and belief of this affiant, the said American Consul, the duly authorized representative of the defendant herein, failed and refused to issue any travel documents as provided for in the said Nationality Act and has done nothing toward securing or issuing such travel document and has instructed affiant's son to wait indefinitely for the issuance of said travel document.

This affidavit is made for the purpose of compelling and requiring defendant to issue a travel document as provided by law in order that this affiant's son, the said Lee Gnan Lung, may be enabled to get transportation and come to the United States for a court determination of his nationality status and may be admitted to the United States under said certificate, all as provided for in the Nationality Act of 1940, and upon further information and belief of this affiant, unless the defendant is ordered to issue such a travel document, he will fail to do so and stall indefinitely and that this affiant and his said son will be denied the right of a judicial hearing as provided by law.

/s/ LEE KUT.

Subscribed and sworn to before me this 13th day of March, 1952.

[Seal] /s/ EDWARDS E. MERGES,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed March 21, 1952.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

This Matter having come on regularly to be heard before the undersigned Judge of the above-entitled court upon the motion for show cause order presented by the plaintiff in the above-entitled cause,

and it appearing to the court from the affidavit of plaintiff that good cause exists and that a show cause order should be issued herein, now, therefore, it is hereby

Ordered, Adjudged and Decreed that the defendant, Dean C. Acheson, be and appear before the Honorable William J. Lindberg, one of the Judges of the above-entitled court on the 28th day of April, 1952, at 10 o'clock a.m., then and there to show cause, if any he may have, why he should not issue forthwith a Certificate of Identity or travel document to the plaintiff herein to enable said plaintiff to obtain transportation and be admitted to the United States, and obtain thereby a judicial hearing upon the question of his citizenship, all in accordance with Sec. 503 of the Nationality Act of 1940; and it is further

Ordered, Adjudged and Decreed that the said defendant be and appear in court at said place and time to further show cause why he should not be held in contempt of court for his failure and refusal to issue such travel documents as are provided for by law in such cases.

Done in Open Court this 21st day of March, 1952.

/s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

[Endorsed]: Filed March 21, 1952.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Dean C. Acheson, Secretary of State of the United States of America, by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and John E. Belcher, Assistant United States Attorney for the same district, and for return to the order to show cause herein shows:

I.

That a copy of the order to show cause herein was promptly forwarded to the Secretary of State through the Attorney General of the United States and by teletype April 17, 1952, the Attorney General states:

“Litated April 4, 1952, Re Lee Gnan Lung v. Acheson. State Department Advised Us Plaintiff Has Not Appealed to Secretary for Certificate and Therefore Administrative Remedies Have Not Been Exhausted.”

And in confirmation, Secretary of State has advised by letter:

“* * * case Lee Gnan Lung (Civil Action 3010) * * * application being processed by Consul General in Hong Kong at present time.”

II.

That because of the pendency of plaintiff's application before Consul General, Hong Kong, and there being no refusal to process the same, the action

herein is premature, and there having been no appeal to the Secretary of State, plaintiff has not exhausted his administrative remedy.

Wherefore, defendant prays that plaintiff's action be dismissed and the rule to show cause herein be discharged, or in the alternative this action be abated.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

[Endorsed]: Filed April 25, 1952.

[Title of District Court and Cause.]

ORDER DIRECTING DEFENDANT TO ISSUE
TRAVEL DOCUMENT IN ACCORDANCE
WITH SECTION 503 OF THE NATIONAL-
ITY ACT OF 1940

This Matter having come on regularly to be heard before the undersigned Judge of the above-entitled court upon an order to show cause heretofore issued herein, ordering and directing the defendant, Dean C. Acheson, to show cause, if any he may have, why he should not issue forthwith certificate of identity or travel document to allow the plaintiff herein to obtain transportation and come to the United States to have a judicial hearing upon the question of his

citizenship in accordance with Section 503 of the Nationality Act of 1940; and it appearing to the Court that said order to show cause was duly served upon the defendant herein and that said defendant has made his return and has appeared in court through the Honorable John E. Belcher, Assistant United States Attorney; and the Court having read the motion and affidavit made on behalf of the plaintiff and having examined the exhibits introduced and it appearing to the Court that suit under the Nationality Act of 1940, Section 503 thereof, has been pending herein and that evidence of said suit has been properly presented to the defendant and his agents, all in accordance with law, and that the plaintiff's request for a travel document has long been pending, that no travel document has been issued and that under and by reason of Section 503 of the Nationality Act of 1940 the plaintiff is entitled to the issuance of a travel document instanter to enable him to come to the United States and have a judicial hearing on the question of his citizenship in accordance with the said Nationality Act, now, therefore, it is hereby

Ordered, Adjudged and Decreed that the defendant and/or his diplomatic or consular officer in Hong Kong, China, issue to the plaintiff a certificate of identity, stating plaintiff's nationality status is pending before the court and permitting him to be admitted to the United States. Such certificate shall be issued immediately upon receipt of a cer-

tified copy of this order by the defendant and without delay.

Done in Open Court this 5th day of May, 1952.

/s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

Approved as to form and entry:

/s/ JOHN E. BELCHER,
Asst. U. S. Attorney.

[Endorsed]: Filed May 5, 1952.

[Title of District Court and Cause.]

MOTION FOR STAY OR RECALL OF ORDER

Comes now Dean C. Acheson, Secretary of State of the United States of America, by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and John E. Belcher, Assistant United States Attorney for the same district, and respectfully moves this honorable court for an order staying its order heretofore entered herein directing defendant to issue a travel document to plaintiff to enable plaintiff to come to the United States for the purpose of prosecuting the above-entitled action, or in the alternative to revoke the same.

This motion is based upon the records and files

herein, and upon the affidavit of John E. Belcher, attached hereto and made a part hereof.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

United States of America,
Western District of Washington,
Northern Division—ss.

John E. Belcher, being first duly sworn, on oath, deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the Western District of Washington, and as such, has at all times been in active charge of the defense of the above case.

That heretofore and on the 5th day of May, 1952, there was entered herein an order directed to the defendant reading:

“Ordered, Adjudged and Decreed that the defendant and/or his diplomatic or consular office in Hong Kong, China issue to the plaintiff a certificate of identity, stating plaintiff’s nationality status is pending before the court and permitting him to be admitted to the United States. Such certificate shall be issued immediately on receipt of a certified copy of this order by defendant and without delay.”

Affiant states that a copy of said order was forwarded by him to the Attorney General of the United States, who, under date of May 23, 1952, instructed as follows:

“We therefore suggest that you immediately file a motion to dismiss the complaint on the ground that it does not set forth a cause of action under Section 503 of the Nationality Act, the only basis for the Court’s jurisdiction. In further support of this motion, you can point out to the court that it appears from the face of the complaint that there are many Chinese claiming to be citizens who are ahead of plaintiff on the passport interview list at Hong Kong and that it would be unfair to them to have plaintiff given a preference, and also unfair to those who follow proper procedure by exhausting their administrative remedies.

“In connection with the motion to dismiss, we suggest that you also request the court to stay its order of May 5, directing the issuance of a certificate of identity pending determination of the motion. * * *”

Affiant further states that he has been advised by R. B. Shipley, Chief, Passport Division, Department of State, that on May 1, 1952, the American Consulate General at Hong Kong had reported that the citizenship claim of Lee Gnan Lung was initiated March 14, 1951, and bears No. 4423; that there were approximately 1200 similar cases initiated at earlier dates which were being processed in turn

and which precede this case on the appointment schedule; that the evidence of identity submitted by the applicant in support of his claim had been reviewed and it was determined to be inadequate to permit immediate documentation and that the Consulate General therefore contemplated the usual examination and personal interview in the applicant's normal turn.

Affiant further states that in all fairness to all concerned, especially to those persons, who for financial reasons are unable to resort to civil actions, and to attorneys who have advised their clients to wait the orderly administrative processes, that preference in travel permits was properly denied.

/s/ JOHN E. BELCHER.

Subscribed and sworn to before me this 2nd day of July, 1952.

[Seal] /s/ TRUMAN EGGER,
Chief Deputy Clerk, U. S. District Court, Western
District of Washington.

[Endorsed]: Filed July 2, 1952.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION
FOR ORDER TO SHOW CAUSE

State of Washington,
County of King—ss.

Edwards E. Merges, being first duly sworn, on oath deposes and says: that he is attorney for the plaintiff in the above-entitled cause and that heretofore there was issued herein an Order Directing Defendant to Issue Travel Documents in Accordance With Section 503 of the Nationality Act of 1940; that said order specifically directed the defendant or his counsel or officer in Hong Kong to issue to the plaintiff a Certificate of Identity to permit plaintiff to come to the United States and attend a hearing upon the question of his citizenship; that this affiant forwarded a copy of the court's order to Mrs. R. B. Shipley, Chief of the Passport Division, Washington, D. C.; and in addition thereto turned over copies of said order to the marshal for service upon the defendant; and in addition caused to be presented to the American Consul in Hong Kong copies thereof; that the defendant and his consular representatives refused to comply with the order of the court, and on May 22, 1952, affiant sent the following telegram to Mrs. R. B. Shipley: "re Lee Gnan Lung, reference my letter dated May 16 and enclosure, plaintiffs advise U. S. Consul in Hong Kong refuses to obey court order. Please advise your position." That said Shipley failed and neglected to answer or reply in any way

to by reason of the matters and things herein set forth, the defendant has failed and refused to obey the order of the court and should be held in contempt; and that defendant's motion for stay of order has been denied; and that plaintiff is entitled to have defendant comply with the law and issue travel documents as the law compels him to do, and that defendant should be held in contempt for his failure so to do.

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

Subscribed and sworn to before me this 14th day of July, 1952.

[Seal] /s/ IRVING CLARK, JR.,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed July 14, 1952.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

This Matter having come on regularly to be heard before the undersigned judge of the above-entitled court, and the court having read the affidavit of Edwards E. Merges, attorney for the plaintiff, and it appearing from said affidavit and from the records and files in this cause that the defendant has failed and refused and continues to fail and refuse to comply with the specific order of the court made on

the 5th day of May, 1952, which said order directed issuance of travel documents to the plaintiffs, and it further appearing to the court that the defendant should be ordered to appear before this court to show cause why he should not be held in contempt; now, therefore, it is hereby

Ordered, Adjudged, and Decreed that the defendant, Dean C. Acheson, be and he hereby is directed to be and appear before the undersigned judge of the above-entitled court on the 4th day of August, 1952, at 2 p.m., then and there to show cause, if any he may have, why he should not be held in contempt of court for his failure and refusal to obey the order of this court made on the 5th day of May, 1952, and directing said defendant to issue travel documents to the plaintiff in accordance with Section 503 of the Nationality Act of 1940.

Done in Open Court this 14th day of July, 1952.

/s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ EDWARDS E. MERGES,
Attorney for Plaintiffs;

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed July 14, 1952.

[Title of District Court and Cause.]

ORDER UPON MOTION TO STAY

This Matter having come on regularly to be heard before the undersigned judge of the above-entitled court, and the court having listened to the arguments of the defendant upon his motion for a stay of the order heretofore issued herein directing issuance of travel permit, and the court having fully considered the facts and the law in the premises, and the arguments of counsel, now, therefore, it is hereby

Ordered, Adjudged, and Decreed that the defendant's said motion be and it is hereby denied.

Done in Open Court this 14th day of July, 1952.

/s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

Approved as to form and entry:

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed July 14, 1952.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Matter having come on regularly to be heard before the undersigned Judge of the above-entitled

court upon a petition filed herein by the plaintiff, Lee Gnan Lung, under Section 503 of the Nationality Act of 1940, Title 8 U.S.C.A. 903; and the defendant having filed an appearance but no answer to the petition of plaintiff and it having been stipulated in open court that the defendant may be considered to generally deny the allegations contained in said petition; and it appearing to the court that the plaintiff is not personally present in court by reason of the failure of the defendant to issue him a travel document to enable him to come to the United States and attend a trial upon the question of his citizenship in accordance with the provisions of Section 503 of the Nationality Act; and the court having held that the matter should proceed to trial in the absence of the plaintiff, Lee Gnan Lung, and witnesses thereupon having been sworn and having testified in support of the allegations of the petition and the plaintiff then having rested and the defendant having made oral argument and having thereupon moved the court to order a blood examination of the plaintiff and the court having denied said motion upon the grounds that the motion was neither timely nor warranted by the facts and circumstances as shown in the case, and the court having thereupon considered the matter and the evidence introduced and the arguments of counsel and being fully advised in the premises, now, therefore, makes and enters the following

Findings of Fact

I.

That Lee Kut, the father of the plaintiff, Lee Gnan Lung, is a citizen of the United States, an honorably discharged veteran of World War II and a resident of Seattle, King County, Washington.

II.

That the defendant is the duly appointed, qualified and acting Secretary of State of the United States of America.

III.

That the plaintiff, Lee Gnan Lung, was born in China at Wah Lum Village, Hoy Shan District, on September 15, 1926, and was the lawful issue of the marriage of Lee Kut and his wife, Lew Shee, who is now deceased.

IV.

That in February of 1951 the plaintiff's father, Lee Kut, caused to be prepared an identification affidavit, stating his relationship to the plaintiff and all the particulars concerning the same and that said affidavit was prepared for the purpose of securing from the American Consul at Hong Kong a travel document to enable the plaintiff to travel to the United States; and that said identification affidavit was filed with the American Consul but that the American Consul failed to grant the plaintiff any travel document.

V.

That it was not possible for the plaintiff to be personally present in court by reason of the failure

of the defendant to issue plaintiff a travel document to enable him to come to the United States.

VI.

That the plaintiff's paternal grandmother, his paternal uncle, paternal cousin and other witnesses have all testified affirmatively to the relationship in question and the court finds that Lee Gnan Lung is the foreign born blood son of Lee Kut, born in lawful wedlock.

From the foregoing Finds of Fact the court makes the following

Conclusions of Law

I.

That the plaintiff is entitled to the entry of a decree adjudging him to be a citizen of the United States in accordance with Section 503 of the Nationality Act of 1940.

Done in Open Court this 22nd day of October, 1952.

/s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

Approved as to form and entry:

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed October 22, 1952.

Entered October 23, 1952.

United States District Court, Western District of
Washington, Northern Division

No. 3010

LEE GNAN LUNG, By His Next Friend, LEE
KUT,

Plaintiff,

vs.

DEAN C. ACHESON, Secretary of State of the
United States of America,

Defendant.

DECREE AND ADJUDICATION
OF CITIZENSHIP

This Matter having come on regularly to be heard before the undersigned Judge of the above-entitled court upon a petition filed herein by the plaintiff, Lee Gnan Lung, under Section 503 of the Nationality Act of 1940, Title 8 U.S.C.A. 903; and the defendant having filed an appearance but no answer to the petition of plaintiff and it having been stipulated in open court that the defendant may be considered to generally deny the allegations contained in said petition; and it appearing to the court that the plaintiff is not personally present in court by reason of the failure of the defendant to issue him a travel document to enable him to come to the United States and attend a trial upon the question of his citizenship in accordance with the provisions of Section 503 of the Nationality Act; and the court having held that the matter should

proceed to trial in the absence of the plaintiff, Lee Gnan Lung, and witnesses thereupon having been sworn and having testified in support of the allegations of the petition and the plaintiff then having rested and the defendant having made oral argument and having thereupon moved the court to order a blood examination of the plaintiff and the court having denied said motion upon the grounds that the motion was neither timely nor warranted by the facts and circumstances as shown in the case, and the court having thereupon considered the matter and the evidence introduced and the arguments of counsel and being fully advised in the premises, now, therefore doth hold and determine:

That Lee Gnan Lung, the plaintiff in the above-entitled cause is a citizen of the United States by reason of being the foreign born son of a United States citizen, Lee Kut, and the court finds and declares by this decree that the said Lee Gnan Lung as such citizen is entitled to all the rights and privileges appertaining to such citizenship, including his right to enter and remain in the United States.

For the purpose of identification there is attached to this decree under the seal of this court a picture of the said Lee Gnan Lung which is a true and correct likeness of him at the present time.

Done in Open Court this 22nd day of October, 1952.

[Seal] /s/ WILLIAM J. LINDBERG,
District Judge.

Presented by:

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

Approved as to form and entry:

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed October 22, 1952.

Entered October 23, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Lee Gnan Lung, Plaintiff, and Edwards E. Merges, his attorney

You and Each of You will please take notice that Dean C. Acheson, defendant above-named hereby gives notice of appeal to the Court of Appeals for the Ninth Circuit from that certain judgment and decree entered in the above-entitled cause on the 22nd day of October, 1952, and from each and every part thereof.

Dated this 18th day of December, 1952.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed December 18, 1952.

[Title of District Court and Cause.]

POINTS TO BE RELIED UPON ON APPEAL

Comes now Dean C. Acheson, by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and John E. Belcher, Assistant United States Attorney for the same district, and designates the following points to be relied upon on the appeal herein:

The Court erred in the following particulars:

1. The Court erred in refusing to dismiss plaintiff's complaint for lack of jurisdiction.
2. The Court erred in its order directing defendant to issue to plaintiff a travel order entitling plaintiff to travel to the United States to prosecute this action.
3. The Court erred in denying defendant's motion to stay its order for travel document.
4. The Court erred in denying defendant's motion for a blood-grouping test.
5. The Court erred in holding the evidence sufficient to establish American citizenship in plaintiff.
6. The Court erred in entering a decree declaring plaintiff to be an American citizen.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed February 2, 1953.

[Title of District Court and Cause.]

STIPULATION AND ORDER
TRANSFERRING EXHIBITS

It Is Hereby Stipulated by and between the parties herein, through their respective counsel, that the original exhibits introduced and admitted in evidence herein be transmitted by the Clerk of this Court to the Clerk of the United States Court of Appeals for the Ninth Circuit.

Dated this 28th day of January, 1953.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

/s/ EDWARDS E. MERGES,
Attorney for Plaintiff.

Order

In conformity with the foregoing stipulation, the Clerk of this Court is hereby directed to forthwith transmit to the Clerk of the Court of Appeals for the Ninth Circuit all exhibits admitted in evidence in the above-entitled cause in connection with the appeal herein.

Done in Open Court this 2nd day of February, 1953.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Presented by:

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed February 2, 1953.

In the District Court of the United States for the
Western District of Washington, Northern Division

No. 3010

LEE GNAN LUNG, By His Next Friend, LEE
KUT,

Plaintiff,

vs.

DEAN C. ACHESON, Secretary of State of the
United States,

Defendant.

TRANSCRIPT OF TRIAL PROCEEDINGS

had in the above-entitled and numbered cause before
The Honorable William J. Lindberg, United States
District Judge, at Seattle, Washington, commenc-
ing at 10:00 o'clock a.m., on the 22nd day of Octo-
ber, 1952.

Appearances:

EDWARDS E. MERGES, ESQUIRE,
Appeared on Behalf of the Plaintiff.

JOHN E. BELCHER, ESQUIRE,
Assistant United States Attorney, Western
District of Washington,
Appeared on Behalf of the Defendant.

Whereupon, the following proceedings were had,
to wit:

Proceedings

The Court (After conference with respective
counsel relative to trial dates for other causes):

We will then proceed with Number 3010, Lee Gnan
Lung vs. Acheson.

Mr. Merges: The background of this matter is
—a brief summary may be—helpful to the Court.

The background of this matter is that the ap-
plicant's father in this case is a resident of Seattle.
He operates a wholesale laundry business here with
his brother called the Star Laundry. They do
laundry in wholesale quantities for various hotels in
the city.

As a result of a trip to China in 1925, there was
born to him a son named Lee Gnan Lung.

The immigration authorities have written a letter,
or summary, of the investigation of the file of the
applicant's father, which we will ask be read into
the record, in order to save time, in which the im-

migration people advise that the applicant's father was in China in time to make his paternity of this boy possible, and also this file shows that upon examination by the immigration officers upon his return to the United States from China—the boy was born after he arrived here, but, upon a subsequent examination in some immigration proceeding, I don't remember which it was, he mentioned this boy.

The affidavit was filed by Lee Kut, who is the father, [3*] in March, '51.

After the filing of the affidavit, the following October, we wrote to the American Consul in an endeavor to get a decision in the case without any success and there was considerable correspondence back and forth between my office and the Consul's office in an endeavor to get the matter determined; that is, the right of this boy to have a travel document allowed, and we were unsuccessful in doing so.

The Government made a motion in this case. We secured a show cause order and the Court entered an order directing issuance of a travel document.

The Government resisted that rather strenuously and briefs were filed and the travel document was never issued.

The Government then, in July of this year, made a motion to stay the order directing issuance of the travel document which was denied on the 14th of July, 1952.

We then made a motion to hold the defendant,

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Dean Acheson, in contempt of court for his failure to comply with the order of the Court, and the Court indicated at first that he felt that the defendant was in contempt of Court and later the Court indicated that he had deviated from that decision and felt serious doubts as to whether or not he had jurisdiction to hold the defendant in contempt of court, and directed him to issue a travel document.

The Court: That was probably in accordance with the decision of Judge Goodman.

Mr. Merges: Yes. The Court was impressed [4] with the decision of Judge Goodman.

The Court made no ruling but just indicated his feeling at the time.

So that I requested leave to present the matter by way of brief and detailed argument on the law and about that time Mr. Belcher, the Court, and I had some discussion in court about the matter of holding the Secretary of State in contempt and we decided that, perhaps, the case could be tried in absentia; that is, without the applicant being here.

Your Honor will recall from Judge Goodman's opinion, Judge Goodman felt even though the court didn't have jurisdiction that it might well have jurisdiction to order the applicant to be produced as a witness.

So it was concluded that rather than to go into the matter at this time and in this case of the Court's jurisdiction to hold the defendant in contempt and to order the issuance of a travel document it was decided that we would proceed with the trial and offer what evidence we had and that the

Court would then go on and make what order he felt was proper in view of the circumstances.

The Court: And further proof might be put in.

Mr. Merges: Yes, whatever proof in the case indicated.

The Court: By the way, is that opinion or decision of Judge Goodman on appeal?

Mr. Merges: Not that I know of, your Honor. I am [5] in communication with those parties in San Francisco, the various attorneys in these cases, and I asked them to inform me what the rulings are in various cases down there and they have not yet advised me whether or not that case is being appealed.

The Court: Was that an interlocutory decision?

Mr. Belcher: Yes.

Mr. Merges: That was an interlocutory order; then that reminds me of whether or not those orders can be appealed.

The Court: Assuming the case proceeded, then in due course that order would be reviewable upon appeal.

Mr. Merges: Evidently.

The Court: Yes.

Mr. Merges: There hasn't been any appeal from that order and, as I recall now, there is a serious question of whether you can appeal from it.

The case has not been, so far as I know, finally determined on the merits one way or another. So, I guess that point is still up in the air.

However, we felt that possible in this case—at

least I felt that way—that due to the fact that in this case we are fortunate enough to have a lot of witnesses that perhaps that question need not be determined in this case.

All these cases, of course, are not going to be that way. We are going to have some of them where we don't have much more than the father and, possibly, one other relative because that is [6] just the way it is in some families.

However, in this case we do have a lot of witnesses and I want to put them on.

Now, the Government has already raised the question in this case about necessity of appeal, which the Court determined against the Government.

So, as I understand it, that question has been resolved.

The Court: That is the question of appeal?

Mr. Merges: Yes, whether or not it is necessary for them to appeal.

The Court: Before filing an action?

Mr. Merges: Yes, sir. The question in this case is that the Consul has just not acted one way or another about it and this affidavit was filed back in February, 1951.

Now, the Consul has written to Mr. Belcher and Mr. Coleman a letter that they were kind enough to show me indicating that they were still thinking about this case but that by reason of lack of evidence that they were going to recommend that the case be turned down.

Well, perhaps there is lack of evidence in Hong

Kong by reason of the fact that the grandmother and grandfather are dead. The boy's mother is dead. And so, there is not anybody very much to testify there, but we have most of the other members of the family here.

There is no feasible way, of course, that we can ship [7] them over to China to testify before the Consul and, inasmuch as the Consul has already stated in his letter that he will probably make an unfavorable recommendation, it is certainly a foregone conclusion that the authorities in Washington are going to follow his recommendation that any further delay in this case would be of no consequence and, in any event, as I understand the law, in the determination of this court the court has jurisdiction.

We are going to offer the applicant's father, the applicant's paternal uncle, the applicant's grandmother, the wife of the applicant's cousin, and a couple of other witnesses who have been in China and visited his home.

I had a family group picture. I asked these parties if they had any group picture and they said "yes," they had one at home, and they brought a great big picture they had on the wall at home and I found, however, that this picture was a composite picture wherein different people had been set in. Of course, by reason of the fact they had the picture at home and produced it only at my request, I was satisfied that it was not made for any ulterior motives but, inasmuch as it was a composite pic-

ture, I shall not offer it in evidence because I feel it would not be of very much value.

I feel that is all I have so far as my opening statement is concerned.

The Court: You may proceed.

Mr. Belcher: I might say, if your Honor please, that the position of the Department is that this action is somewhat premature [8] in view of the fact that one of the essential allegations in the Complaint is that they have been denied the right or privilege of an American citizen.

The status of the nationality of the applicant has not yet been determined by the Consul.

The only evidence that the plaintiff in this case can present is hearsay.

Mr. Merges and I have been in conference since about nine (9:00) o'clock. Yesterday when we discussed the matter he thought he had one witness who was present in China at the time the child was born, but it later develops it was two (2) years later that the grandmother was in China.

So that I believe the evidence here will all be hearsay. I suggested to counsel this morning that I thought perhaps a delay in the hearing—rather than taking a chance on having the rights of this party determined adversely to him, that it might be better to wait until the State Department, or the Consul in China, had acted.

I concede, if your Honor please, that the father is an American citizen; alleged father, that is.

I haven't any objection to delivering to counsel,

if he desires to offer it in evidence, a copy of a letter that is addressed to me as Assistant United States Attorney, from the Director of Immigration, conceding that the alleged father is an American citizen and he was in China at such time as to have been possible for him to have been the father of this Plaintiff. [9]

We did not file an Answer and I take it the Court will permit me to treat it as a general denial.

Motion to dismiss, which was filed earlier in the proceedings——

The Court: That was denied, was it not? The motion to dismiss was denied?

Mr. Belcher: I take it that it was, but no formal order was entered.

The Court: No order entered?

Mr. Merges: Yes, there was an order entered.

Mr. Belcher: Well, that was an oversight on my part then that I didn't get an Answer in.

Mr. Merges: There was an order entered on the 10th of July, 1952.

Mr. Belcher: But, if we can treat this as a general denial, we can take the evidence if Counsel so desires.

The Court: July when?

Mr. Merges: July 14th, if your Honor please.

The Clerk: Plaintiff's Exhibit Number 1 marked for identification.

(Plaintiff's Exhibit Number 1 marked for identification.)

The Court: Do you have a copy of it, Mr. Merges?

Mr. Merges: Yes, if your Honor please.

The Clerk: Plaintiff's Exhibit Number 2 marked for [10] identification.

(Plaintiff's Exhibit Number 2 marked for identification.)

Mr. Belcher: That was the order denying our motion to stay.

The Court: Well, the record may show that there was no motion to dismiss filed.

Mr. Belcher: No; it was returned with the order to show cause.

The Court: And that the motion to stay has been denied, and the Defendant having failed to file an Answer, and the Plaintiff having to put on proof anyway, the Court will consider the allegations denied, and you may proceed.

Mr. Merges: I will offer, if your Honor please, Plaintiff's Exhibit 1, being a photostatic copy of the father's certificate of identity, the original certificate having been compared with the photostatic copy by Mr. Belcher this morning, and I think Mr. Belcher will stipulate that that is a true copy of the certificate of identity issued by the Immigration Service.

Mr. Belcher: It is so stipulated.

The Court: The stipulation may be admitted, and Plaintiff's Exhibit 1 may be admitted.

There is no objection?

Mr. Belcher: No objection.

(Plaintiff's Exhibit Number 1 [11] admitted in evidence.)

Mr. Merges: I will offer Plaintiff's Exhibit 2, being a copy of a letter signed by John Boyd, being a brief statement of the Immigration Service relative to the contents of the father's file in this case.

Mr. Belcher: No objection, your Honor.

The Court: It may be admitted.

(Plaintiff's Exhibit Number 2 admitted in evidence.)

Mr. Merges: Lee Kut, will you step forward, please? [12]

LEE KUT

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Merges:

Q. Will you state your name to the Court, please? A. My name is Lee Kut.

Q. You must speak louder now. Mr. Belcher and I can't hear you. A. My name is Lee Kut.

Q. Showing you what the Clerk has marked Exhibit 1, is that a copy of your Certificate of Identity? A. It is.

Q. That indicates that you landed in this country as an American citizen on the 14th of October, 1913; is that correct? A. That is correct.

(Testimony of Lee Kut.)

Q. How long did you live in this country after your admission in 1913? A. Until 1921.

Q. Did you come to this country with your mother? A. Yes, sir.

Q. And your father? A. Yes, sir.

Q. Your father is dead? [13] A. Yes, sir.

Q. Your mother is present in court this morning? A. Yes, sir.

Q. Did you return to China in 1921?

A. Yes, sir.

Q. Were you married? A. No, sir.

Q. When did you marry?

A. The year of 1925.

Q. In China? A. Yes, sir.

Q. Who did you marry? A. Lew She.

The Court: How do you spell that?

Mr. Merges: L-e-w S-h-e (spelling).

Q. (By Mr. Merges): That was a woman of the Lew family, I take it. A. That is right.

Q. And by reason of her marriage, according to the Chinese custom, she added the character "She" to her name indicating she was a married woman of the Lew family? A. That is correct.

Q. How many children did you have?

Mr. Merges: Strike that please, Mr. [14] Reporter.

Q. (By Mr. Merges): Did you marry Lew She in accordance with the Chinese custom?

A. Yes.

Q. Did you consummate a valid marriage with Lew She? A. Can you explain that, sir?

(Testimony of Lee Kut.)

Q. Was your marriage valid according to Chinese law? A. Yes.

Q. And you thereafter lived with her as her husband; is that correct? A. That is correct.

Q. What children do you have?

A. I have three (3) children.

Q. Will you name them? Did you have them all by Lew She? A. Yes, sir.

Q. When was the boy, who is the subject of this action, Lee Gnan Lung, born?

A. He was born in 1926.

Q. Had you been in China just prior to that time? A. Yes, sir.

Q. When did you make that trip to China?

A. I made that trip to China in 1925.

Q. And you were still married to Lew She at that time? A. Yes, sir. [15]

Q. And your boy, Lee Gnan Lung, was born as a result of that union on that trip; is that correct?

A. That is correct.

Q. Showing you what the Clerk has marked Plaintiff's Exhibit 3, purporting to be a picture of a young Chinese, can you identify that picture?

(Plaintiff's Exhibit Number 3 marked for identification.)

A. Yes, sir.

Q. Who is it? A. That is my son.

Q. Lee Gnan Lung? A. Correct, sir.

Q. Is that an accurate likeness of him?

A. That is a very accurate likeness.

(Testimony of Lee Kut.)

Q. Now, after this boy was born in 1926, when did you next return to China?

A. I next returned to China in 1934.

Q. You returned to China in 1934. Did you see that boy for the first time then?

A. Yes, sir; that was the first time.

Q. How long did you remain in China on that trip? A. Oh, not more than a year.

Q. Is there any doubt in your mind but that the boy Lee Gnan Lung was the son who was born to you? [16] A. Yes; that is my son.

Q. That is your son. I said, is there any doubt in your mind? A. There is no doubt.

Q. How long did you remain in China on that trip? A. On that trip?

Q. That is the 1934 trip, the first time you saw this boy?

A. The first time I saw him, I remained in China until 1935. I returned to this country in 1935.

Q. And did you make another trip to China?

A. After 1935?

Q. Yes. A. Yes, sir.

Q. What was your second trip to China?

A. My second trip to China was 1926.

Q. Then that would be—I mean the trip after 1935?

A. After 1935? That trip was made in 1939.

Q. And how long did you remain in China then?

A. Oh, not more than a year.

Q. Did you go to your home village and your home in China? A. Yes, sir; I did.

(Testimony of Lee Kut.)

Q. Was your son Lee Gnan Lung living in your home?

A. There was two (2) sons living in my home.

Q. Was one of them Lee Gnan Lung? [17]

A. Lee Gnan Lung, the eldest.

Q. And did you see him at that time?

A. Yes, sir.

Q. Did you live in your home during the time you were in China on that trip? A. Yes, sir.

Q. When did you return from China to the United States? A. 1940.

Q. 1940? A. Yes, sir.

Q. Have you been to China since then?

A. No, sir.

Q. Have you served in the Armed Services?

A. I have, sir.

Q. And were you honorably discharged?

A. Yes, sir.

Q. Were you ever convicted of a narcotics violation? A. I was, sir.

Q. And did you serve your time for that?

A. Yes, sir.

Q. How long?

A. A little over two (2) years, sir.

Q. And have you ever been in any other kind of trouble other than that? A. No, sir. [18]

Q. Were you honorably discharged from the Service? A. Yes, sir.

Q. How long did you serve?

A. Oh, about a little over three (3) years.

(Testimony of Lee Kut.)

Q. A little over three (3) years? A. Yes.

Q. Did you serve overseas? A. Yes, sir.

Q. And what were you in over there?

A. Actually?

Q. Yes.

A. My branch of service was the infantry.

Q. And did you receive any awards?

A. Yes, sir.

Q. Will you state what they were?

A. It is written in my discharge.

Q. Well, what were they?

A. May I look at it?

Q. Yes.

Mr. Belcher: I think that is immaterial, your Honor.

The Court: Oh, the Court will overlook the objection and permit it.

A. Oh, I have the Bronze Star and Good Conduct Medal and Asiatic Service Medal. [19]

Q. (By Mr. Merges): May I see your Certificate of Discharge, please? A. Yes, sir.

Q. When did you make your next trip to China, or did you make any other trips to China?

A. None.

Q. Pardon? A. None.

Q. No other trips to China.

Did you file an affidavit with the American Consul to bring your son over here? A. I did.

Q. Lee Gnan Lung? A. I did.

Q. And that was filed in March of 1951? Is that correct? A. That is correct.

(Testimony of Lee Kut.)

Q. And no action has been taken on that yet; is that true? That is at least he is not here yet?

A. My son is not here yet.

Q. Now, there have been certain other members of your family who have been back to China.

Did your mother make a trip back to China shortly after your son, Lee Gnan Lung, was born?

A. I believe my mother made a trip to China when my son was at the age of two (2). [20]

Q. And how long did she remain there, if you know?

A. Oh, not more than a year that I know of.

Q. Did your brother make a trip back to China?

A. He did, sir.

Q. And was that when your son was—after your son was born?

A. He made a trip to China after my son was born.

Q. For the purpose of getting married?

A. My brother was getting married.

Q. Yes. A. Yes, sir.

Q. Your brother now lives in Seattle with you; is that correct? A. That is correct, sir.

Q. And you and your brother operate what kind of a business?

A. Oh, we operate a wholesale steam laundry.

Q. What is the address of it?

A. 160 Twelfth Avenue.

Q. How long have you operated that laundry?

A. Oh, a little more than two (2) years.

Q. How many employees do you have?

(Testimony of Lee Kut.)

A. We have a staff of twelve (12).

Q. You do laundry in wholesale quantities for hotels and institutions; is that correct? [21]

A. And Chinese hand laundries.

Q. And Chinese hand laundries send their laundries in to you and you do it in large quantities?

A. That is correct.

Q. Where is your father?

A. My father is dead.

Q. Your mother is here in Seattle?

A. That is correct.

Q. And where is Lew She? A. She died.

Q. When did she die? A. In the year 1942.

Q. Who is living in your home? What is the condition—I mean in your home village—what is the condition there, or do you know?

A. The last I know of they were home with their cousins.

Q. Is that in communist territory?

A. That is now held—that is now in communist territory.

The Court: You are referring to whom now?

Mr. Merges: His home. His house. His family house, your Honor.

Q. (By Mr. Merges): Now your son, Lee Gnan Lung, was successful in getting out of communist territory and getting into the city of Hong Kong; is that correct? [22] A. That is correct.

Q. And he has been living there awaiting passage to this country; is that correct?

(Testimony of Lee Kut.)

A. That is correct.

Q. And how long has he been in Hong Kong?

A. Oh, he has been in Hong Kong for over two (2) years.

Q. What is he doing there?

A. Well, he is some sort of an assistant clerk in a Chinese hotel.

Q. Just waiting to come to this country?

A. Just waiting to come to this country.

Q. Now, when you made your allotments in the Service did you mention this son, Lee Gnan Lung?

A. I did, sir.

Q. And did you send a copy, or the original, of the document indicating this allowance and mention of this son, Lee Gnan Lung, back to the American Consul in Hong Kong as evidence in this case for him to consider?

A. I did, sir.

Q. And you haven't seen it since?

A. No, sir.

Q. Is that correct? A. Yes, sir.

The Clerk: Plaintiff's Exhibit Number 4 marked for identification. [23]

(Plaintiff's Exhibit Number 4 marked for identification.)

Mr. Merges: I will offer 3, the picture.

Mr. Belcher: No objection.

The Court: It may be admitted.

(Plaintiff's Exhibit Number 3 admitted in evidence.)

(Testimony of Lee Kut.)

The Clerk: Plaintiff's Exhibit Number 5 marked for identification.

(Plaintiff's Exhibit Number 5 marked for identification.)

Mr. Belcher: What is 4?

Mr. Merges: 4 is that picture.

Q. (By Mr. Merges): Showing you what has been marked Plaintiff's Exhibit 4, purporting to be a photograph containing the likeness of three (3) individuals, reading from right to left, will you tell us who the man in the white suit is?

A. That man in the white suit works in the hotel where we were staying at.

Q. Who is the small boy sitting on the pedestal in the middle?

A. That is my nephew who is at present in the court room.

Q. He is a witness present in court to testify today? [24]

A. Yes, sir.

Q. And who is the one on the extreme right?

A. The one on the extreme right is my son.

Q. Your son Lee Gnan Lung?

A. My son Lee Gnan Lung.

Q. About how long ago was this picture taken?

A. The picture was taken in 1940, or something; 1940.

Q. Now, you had——

Mr. Merges: I will offer this in evidence.

Mr. Belcher: I would like to ask:

(Testimony of Lee Kut.)

Were you present at the time this photograph was taken?

The Witness: No, sir.

Mr. Belcher: Objected to, if your Honor please, as hearsay.

Mr. Merges: Well, I will wait until I have one of the individuals who was present, so that I will offer it later when he gets on the stand.

I will offer Plaintiff's Exhibit 5, being the father's service record.

Mr. Belcher: No objection, your Honor.

The Court: It may be admitted.

(Plaintiff's Exhibit Number 5 admitted in evidence.) [25]

Q. (By Mr. Merges): Is there any doubt in your mind at all but that this boy, Lee Gnan Lung, is your son? A. He is my son.

Q. Why do you wish him to come to the United States?

A. To help me in the business and also to have him with me.

Q. Are there any other witnesses, so far as you know, other than the ones we have this morning in court, that know anything about this case?

A. There is, but they are unobtainable.

Mr. Merges: You may inquire.

(Testimony of Lee Kut.)

Cross-Examination

By Mr. Belcher:

Q. You say you are anxious to have this boy with you? A. Yes, sir.

Q. How long have you been anxious to have him with you?

A. Well, since China was occupied by the communists.

Q. Well, he is—How old is he now?

A. He is twenty-seven (27) this year.

Q. Twenty-seven (27). When did he finish school, do you know, in China? A. In China?

Q. Yes.

A. Well, according to what kind of a school. There is [26] various schools. He has been, right now he is, in Hong Kong studying English.

Q. But when did he finish ordinary school.

A. Oh, ordinary school, in China that would require about six (6) to nine (9) years. That would be when he was around fifteen (15).

Q. You made no effort to get him here after he had completed school, did you?

A. No. I made no effort because his grandfather was born then; his grandfather was still alive then.

Q. And how long has his grandfather been dead?

A. His grandfather died in 1941.

Q. His grandfather died in 1941?

A. Yes, sir.

Q. That is eleven (11) years ago?

A. Yes, sir.

(Testimony of Lee Kut.)

Q. Did you make any effort to bring him to this country within the last eleven (11) years until just recently?

A. I have, but I was unable to. I spent a few years in the Service, was incarcerated for two (2) years, or more, and at other times I was financially unable to.

Q. You were not present in China at the time this boy was born? A. No, sir.

Q. So what you know about his birth somebody told you? [27]

A. No. Oh, the birth, someone told me, yes.

Q. Yes, and what is your means of identification of him?

A. Of my means of identification of him is when I made that trip in 1934. His means of identity, why, I wouldn't say he exactly looks like me, but there are a few resemblances that he looks like me.

Q. There is quite a resemblance among Chinese people generally, isn't there?

A. Yes, but between father and son there is a little distinction.

Q. Now, what time in 1925—what date—did you go to China?

A. We left here in the fall. I presume that would be in around September or October.

Q. September or October? A. Yes.

The Court: 1925?

The Witness: Yes, sir.

Q. (By Mr. Belcher): How long did it take you to get to China from here?

(Testimony of Lee Kut.)

A. Let's see. In those days a steamship averaged twenty-one (21) to twenty-two (22) days.

Q. And do you remember whether it was September or October that you arrived in China, or November?

A. I would say I did arrive in Hong Kong in about October. [28]

Q. The later part, or early part?

A. I would say the early part.

Q. The early part; and when did you leave China? A. In 1926.

Q. 19—What month in 1926?

A. I don't remember that date, sir.

Q. Do you remember the month?

A. Of my arrival?

Q. The month that you left the village?

How far is it from the village to the port where you left China?

A. What was that, sir? How far was the village?

Q. How far is it from the village in which you lived to the port from which you sailed for the United States?

A. Oh, on an authorized map of the world I would say that would be around 140 miles.

Q. And how long would it take you to make that trip? A. Less than a day.

Q. How many? A. Less than a day.

Q. By railroad? A. Railroad and boat.

Q. But you can't remember the month that you left there in 1926? A. No, sir. [29]

(Testimony of Lee Kut.)

Q. Who told you that you had a son born?

A. Well, my wife sent a letter.

Q. Have you got that letter?

A. Not since 1926, sir.

Q. So that your only knowledge of the birth of this alleged child is what someone else told you?

A. That someone else is my wife.

Mr. Belcher: That is all.

Mr. Merges: That is all. Step down.

The Court: I want to ask one question.

What period of time were you imprisoned on the narcotics charge?

The Witness: From 1947 until 1948.

The Court: Was that in this District; in this area?

The Witness: No, sir.

Mr. Belcher: Pardon me just a moment. One question.

Q. (By Mr. Belcher): Do you remember the date that you married your wife?

A. Yes. That was in November, sir.

Q. November what year? A. 1925.

Q. About one (1) month after you arrived there?

A. Yes, sir. [30]

Mr. Belcher: That is all.

(Witness excused.)

Mr. Merges: Let me say, if your Honor please, with reference to the narcotics violation, I don't know that the Government had any knowledge of that in this case but I wanted to be sure, and this man asked me particularly to disclose it to the

Court so that the Court would know all the good things about him and the bad things both. He wished to be absolutely frank and disclose it to the Court of his own violation.

Will you come forward please, Grandmother?

I think we will need an interpreter on this one.

Do you speak English?

The Witness: Not much.

Mr. Merges: Let's try. [31]

LAM GNAN

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Plaintiff's Exhibit 6 marked for identification.

(Plaintiff's Exhibit Number 6 marked for identification.)

Direct Examination

By Mr. Merges:

Q. Showing you what the Clerk has marked Plaintiff's Exhibit 6, is that a copy of your Certificate of Identity? A. Yes.

The Court: Would you identify the witness.

Mr. Merges: I beg your pardon.

Q. (By Mr. Merges): Will you state your name to the Court, please?

A. I can't speak much that.

Q. Just state your name. A. My name?

(Testimony of Lam Gnan.)

Q. Just state your name. A. Lam Gnan.

Q. You are the grandmother of Lee Gnan Lung?

A. Yes.

Q. Is that right? [32] A. Yes.

Mr. Merges: I will offer Plaintiff's Exhibit 6 for identification.

Mr. Belcher: What of?

Mr. Merges: It is a photostat of this lady's Certificate of Identity showing her immigration status.

Will you swear this man as interpreter, please?

(Whereupon Chock Lim Lee was sworn as an interpreter.)

Mr. Merges: I will ask the questions and you translate them into Chinese for the witness and give us her replies in English.

The Interpreter: All right.

Q. (By Mr. Merges): You came to this country in 1913, is that correct? A. That is correct.

Mr. Merges: Speak so that people can hear you now. If you are going to be in interpreter, speak so that we can hear you.

Q. (By Mr. Merges): When did you go back to China?

A. She says she went back after eight (8) years in the United States.

Q. After eight (8) years. That would be approximately 1920. [33] A. 1921.

Q. How long did you stay in China on that trip?

A. About five (5) or six (6) months.

(Testimony of Lam Gnan.)

Q. You then returned to the United States?

A. Yes, sir.

Q. When did you go to China again?

A. I forget exactly what year it was.

Q. Was it in 1928?

A. She thinks it might be.

Q. 1928? A. Yes.

Q. Now, do you have a son named Lee Kut?

A. Yes, she has.

Q. Was that the man who just testified?

A. That is correct.

Q. When you went back to China in 1928, did you go to Lee Kut's house? A. She did.

Q. Did you see that he had a wife?

A. Yes, she did.

Mr. Belcher: Just a moment.

The Court: Do you have an objection?

Mr. Belcher: Yes, your Honor. "Did" she "see that he had a wife?" I don't know what Counsel means by the question. [34]

Q. (By Mr. Merges): Did he have a wife living in the house?

Mr. Merges: Is that all right?

Mr. Belcher: Well, if she knows.

Q. (By Mr. Merges, continuing): If you know?

A. She knows. She has.

Q. Did you go and live in that house with the wife?

A. She lived on one side and Mr. Lee Kut lived on the other.

Q. One side of the same house?

(Testimony of Lam Gnan.)

A. There is a long hallway in between; more or less of a small street in between. I lived across the street but the streets are about six (6) feet long.

Q. Six (6) feet across?

A. Yes, six (6) feet across.

Q. Did Lee Kut's wife have any children in 1928 when you were there? A. Yes, he has.

Q. Did he have a son named Lee Gnan Lung?

Mr. Belcher: Just a moment. I object to the form of the question.

I think that is leading and suggestive. I think she can answer the question as to whether he had a son, and then name the son. [35]

The Court: If the objection is made, you might rephrase the question.

Q. (By Mr. Merges, continuing): What was the son's name? A. Lee Gnan Lung.

Q. And how old was he at that time, approximately? A. About two (2) years old.

Q. How long did you remain in China on that trip? A. She said just for several months.

Q. When did you go—Did you then return to the United States? A. That is correct.

Q. When did you go back to China again?

A. She said just a few years after her return.

Q. Just a few years after your return?

A. That is right.

Q. How long did you stay on that trip?

A. Just several months.

Q. Did you see any children of Lee Kut on that trip? A. She has forgot.

(Testimony of Lam Gnan.)

The Interpreter: May I make a statement?

Mr. Merges: No. You are not sworn as a witness.

Q. (By Mr. Merges): Is that the last trip you made to China? A. (No answer.) [36]

Mr. Merges: Can the witness answer the question, or not?

The Interpreter: She can't. She is kind of nervous.

The Court: The Court will take a ten (10) minute recess.

(Whereupon, at 11:00 o'clock a.m., a recess was had until 11:13 o'clock a.m., October 22, 1952, at which time, counsel heretofore noted being present, the following proceedings were had to wit):

Mr. Merges: Ask the Witness:

Q. Were you in China in 1928?

A. She was.

Q. And did you see Lee Kut's son, Lee Gnan Lung, at that time? A. She did.

Q. Did you make another trip to China?

A. She did.

Q. And when was that? A. 1931.

Q. How long did you stay on that trip?

A. About eight (8) or nine (9) months.

Q. Did you see Lee Gnan Lung at that time?

A. She did. [37]

Q. Did you make another trip to China?

A. She did.

Q. And when was that? A. About 1934.

(Testimony of Lam Gnan.)

Q. And did you see Lee Gnan Lung at that time? A. She did.

Q. Did you make another trip to China?

A. Yes, she did.

Q. When was that? A. 1939.

Q. And did you see Lee Gnan Lung at that time?

A. She did.

Q. Showing you what the Clerk has marked Plaintiff's Exhibit 3, can you identify that picture?

A. That is Lee Gnan Lung.

Q. Is there any doubt in your mind but what this picture represents your grandson?

A. No doubt whatsoever.

Mr. Merges: You may inquire.

Cross-Examination

By Mr. Belcher:

Q. You say there is no doubt in your mind that the picture that was just shown you is your grandson.

How do you know he is your grandson?

A. Because she has seen him several times. [38]

Q. Who told you? Did somebody tell you that he was your grandson?

A. She says she recognizes him.

Q. How could you? How do you recognize him?

A. She has seen him several times in the past when he was a baby she saw him then on several trips she saw him.

Q. Where did you see him?

(Testimony of Lam Gnan.)

A. At his house.

Q. Were you there when he was born?

A. She was not.

Q. Do you know when he was born?

A. She does.

Q. When was it?

A. September. 15th of September.

Q. What year? A. 1926.

Q. How do you know that?

A. Mrs. Lee Kut sent her a letter and told her about it.

Q. Have you got that letter?

A. No, she hasn't. She said she read the letter and kept it a while and then it disappeared among the belongings.

Q. Did you ever see a birth certificate?

A. There is no birth certificate issued in China, she says.

Q. So that your entire testimony as to the identity of this boy is based on what somebody told you; is that correct? [39]

A. She knows it because of the fact that her own daughter-in-law wrote and told her about it.

Q. That is the entire source of her information?

A. That is correct.

Q. Do you know whether or not in China it is a custom for the Chinese people to take other children into their homes?

A. Yes, she does. She knows.

Q. And is that the custom? A. Yes.

(Testimony of Lam Gnan.)

Q. That is the custom; and when the other children are brought in to the home they are considered sons or daughters; are they not? A. Yes.

Q. How do you know this child was—of your own knowledge how do you know that this child was not brought in to the home where you visited?

A. She says all she knows is that the son was born and not adopted.

Q. How do you know that?

A. Well, she says that according to Mrs.—her daughter-in-law wrote and told her about it at the time of his birth.

Q. And that is the entire extent of her knowledge? A. That is correct.

Q. Whereabouts in China were you born?

A. Tai Low Hou. [40]

Q. Where is that with reference to the place where your daughter-in-law lived?

A. She says over one (1) mile.

Q. Over one (1) mile? A. Yes.

Q. And when you visited in 1928, did you have any other members of your family living in that village?

Mr. Merges: Which village?

Mr. Belcher: Where she lived herself.

The Interpreter: Prior to her marriage?

The Court: Are you speaking now of relatives of the witness?

Mr. Belcher: Yes.

Mr. Merges: I object to that as immaterial and confusing.

(Testimony of Lam Gnan.)

Mr. Belcher: This is cross-examination, your Honor.

The Court: I think the question, properly or clearly stated, may be answered. I didn't get what you were getting at. You may restate it.

Mr. Belcher: Would you read it?

(Whereupon, material appearing on lines 6 and 7, page 41, read by the Reporter.)

Q. (By Mr. Belcher) (Continuing): The village where you said you lived [41] prior to 1928.

The Court: She, of course, has been in this country since 1921.

Q. (By Mr. Belcher) (Continuing): Prior to coming to this country.

The Court: Mr. Interpreter, do you understand the question?

The Interpreter: Not too clearly.

Mr. Belcher: I will rephrase it.

The Interpreter: Rephrase it, please.

Q. (By Mr. Belcher) (Continuing): What was the name of the village in which you lived prior to coming to the United States?

The Interpreter: Prior to her first trip to the United States?

Mr. Belcher: Yes.

A. She lived at Wah Lim Lee.

Q. (By Mr. Belcher): And how far is that from the village where your sister-in-law lived in 1928?

The Interpreter: Sister-in-law?

(Testimony of Lam Gnan.)

Mr. Merges: I object to that. We are not talking about a sister-in-law.

Q. (By Mr. Belcher) (Continuing): Daughter-in-law? [42] A. About one-half ($1/2$) mile, sir.

Q. Now, when you visited in 1928, were there any of the immediate members of your own family living in the village that you had lived in prior to your return to China in 1928?

A. She has her husband there at the time.

Q. And did you live with your husband?

A. Yes, she does.

Q. So that you were one-half ($1/2$) a mile away from where your daughter-in-law lived.

Mr. Merges: No.

The Interpreter: No. You got things mixed up.

Mr. Merges: She testified she lived across the alley.

Mr. Belcher: I understand.

The Interpreter: The witness wants to know if you meant by that statement is the former—that is Mr. Lee Kut's wife, before—prior—to her marriage to Mr. Lee Kut or after her marriage to Mr. Lee Kut——

Mr. Belcher: I understand that after she visited China in 1928, she says, and at that time, she had a husband living.

The Interpreter: That is right.

Mr. Belcher: Where did that husband live?

The Interpreter: They lived together, her husband and the witness. [43]

(Testimony of Lam Gnan.)

Q. (By Mr. Belcher): In this village that she lived in prior to her coming to the United States the first time; is that right?

A. That is correct.

Q. On your direct examination you said that when you visited China in 1928 you lived across from the house occupied by your daughter-in-law. Which is correct?

A. The witness states this:

That when the question was asked how far Mr. Lee Kut's wife lived from where she lived, she thought you meant before her marriage to Mr. Lee Kut. That is one-half ($\frac{1}{2}$) mile distance. But after the marriage of Mr. Lee Kut, the witness and Mrs. Lee Kut lived only across the alley from one another.

Q. When did your husband die? A. 1941.

Q. In China? A. Yes.

Mr. Belcher: I think that is all.

Mr. Merges: That is all.

(Witness excused.)

Mr. Merges: Lee Yick. [44]

LEE YICK

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Merges:

Q. Will you state your name, please?

A. Lee Yick.

Q. Are you the brother of Lee Kut who testified as the first witness in this case?

A. Yes.

Q. Speak so that we can hear you, please?

A. Yes, sir.

Q. And do you operate the Star Laundry with him? A. Yes, sir.

Q. When were you admitted to this country?

A. In 1921.

Q. You are an American citizen?

A. Yes, sir.

Q. And you have lived in this country since that time with the exception of some trips to China; is that correct? A. Yes.

Q. Did you make a trip to China in 1928?

A. Yes, sir.

Q. When you went to China, did you go to your brother, [45] Lee Kut's house? A. Yes, sir.

Q. What was the purpose of your going there?

A. At that time my father and my mother and

(Testimony of Lee Yick.)

I went back to China and we visited my brother's wife and my brother's wife told me that Lee Gnan Lung is my brother's son.

Q. Where did you live? Did you live next door to Lee Kut's house when you were in China on that trip? A. With my mother.

Q. Is your mother and father's house next door to Lee Kut's house? A. Yes.

Q. How far away? A. About five (5) feet.

Q. And then you went back to China in 1928 for the purpose of getting married?

A. Yes, sir.

Q. In company with your father and mother?

A. Yes, sir.

Q. How long did you remain in China on that trip? A. About nine (9) months.

Q. And during that time did you live in that house about five (5) or six (6) feet away from Lee Kut's house?

A. After I came there I lived in about five (5) houses from my mother and my brother's [46] house.

Q. About five (5) houses? A. Yes.

Q. In the same row?

A. In the same village.

Q. Same village? A. Yes.

Q. Now, did you go over to Lee Kut's house very often? A. We eat together.

Q. You ate together?

A. At my mother's house.

(Testimony of Lee Yick.)

Q. And did you see Lee Kut's son, Lee Gnan Lung, when you were over there at your brother Lee Kut's house? A. Yes, sir.

Q. Is there any—Was he an adopted boy or a real son? A. That is a real son.

Q. Would you have known if he was adopted? Would you have known it if he was an adopted boy?

A. Known? What do you mean "known"?

Q. Would you have known it? Would you know whether he was a blood son or an adopted boy?

A. Yes, he is.

Q. Would you have known if this boy was adopted?

The Interpreter: May I interpret that?

Mr. Merges: No, he can understand. [47]

Q. (By Mr. Merges): Would you have known whether or not Lee Gnan Lung was adopted?

Do you know what an adopted boy is?

A. Yes.

Q. Do you know what an adopted boy is?

A. Yes, but I don't get the idea "known."

Q. Well, was Lee Gnan Lung adopted?

A. No.

Q. How do you know he wasn't?

A. His wife told me. My brother's wife.

Mr. Belcher: That is objected to.

Q. (By Mr. Merges): When did you go to China again? A. In 1931.

Q. In 1931? A. Yes, 1930 or 1931.

(Testimony of Lee Yick.)

Q. Now wait a minute, you went there in 1928 to get married? A. Yes.

Q. And when did you make another trip back?

A. Around 1931.

Q. Did you see Lee Gnan Lung on that trip?

A. Yes, sir.

Q. Was he living in Lee Kut's house? [48]

A. Yes.

Q. How long did you stay on that trip?

A. Oh, about nine (9) months.

Q. When did you make another trip to China?

A. 1934.

Q. Did you see Lee Gnan Lung then?

A. Yes.

Q. How long did you stay on that trip?

A. About nine (9) months.

Q. Was Lee Gnan Lung living in your brother Lee Kut's house at that time? A. Yes, sir.

Q. When did you go to China again?

A. 1939.

Q. How long did you stay on that trip?

A. Oh, about nine (9) months.

Q. Did you see this boy on that trip?

A. Yes, sir.

Q. Was he living in your brother Lee Kut's house? A. Yes, sir.

Q. Showing you what has been marked Plaintiff's Exhibit 3, can you identify that individual?

A. That is Lee Gnan Lung.

Q. Is he your nephew? A. Yes, sir. [49]

Q. Was that your mother who just testified?

(Testimony of Lee Yick.)

A. Yes, sir.

Q. Where is your father?

A. My father is dead.

Q. Does your mother live with you now?

A. Yes, sir.

Q. And you are married and have a wife and children here in Seattle? A. Yes, sir.

Mr. Merges: You may inquire.

Cross-Examination

By Mr. Belcher:

Q. You were not in China at the time—you were not in China on February 15, 1926, were you?

A. No, sir.

Q. Did you ever see any birth certificate?

A. No, sir.

Q. (Continuing): Showing the birth of Lee Gnan Lung? A. No, sir.

Q. So that the only knowledge you have as to when he was born is this statement made to you by somebody else; is that correct?

A. What statement?

Q. Somebody told you that he was?

A. Yes, my brother's wife told me. [50]

Q. Your brother's wife told you? A. Yes.

Q. And that is the only information you have on the subject? A. Yes.

Q. Did you ever try to verify that in any way by checking a birth certificate?

Mr. Merges: He probably doesn't know what "verify" means.

(Testimony of Lee Yick.)

Q. (By Mr. Belcher): Do you know what birth certificates are? A. Yes; I have got one.

Q. They are issued in China, aren't they?

A. No.

Q. You say no birth certificates are issued in China?

A. When they live in the village they don't have it.

Q. Is there any record at all of births?

A. No.

Q. The only information you have as to whether or not this boy is your nephew is what somebody else told you; is that correct?

A. That is my brother's wife told me.

Q. Yes; and that is the entire source of your knowledge, isn't it? A. Yes. [51]

Q. Have you any children of your own?

A. Yes, sir.

Q. Were they born in this country or in China?

A. Some in China and some here.

Q. And don't you know as a matter of fact that the village head master—what do they call it—head of the village—

Mr. Merges: Head man; not head master.

Q. (By Mr. Belcher) (Continuing): —head man of the village—is that what you call him?

A. Head man of the village.

Q. Is that what they call him? Was there a head man of your village where you lived?

A. Just old people. They ain't got any head man in the village.

(Testimony of Lee Yick.)

Q. They don't have any head man in the village?

A. No.

Q. Did you report to whoever was in charge of the village the birth of your children in China?

A. No.

Q. Do you know of any record of any kind that is kept in China of the birth of your children?

A. No. My wife told me.

Q. You were in the United States at the time your first child was born? [52]

A. Yes.

Q. So you only know that the child was born by what your wife told you?

A. Yes.

Q. And you only know about the Plaintiff in this case, Lee Gnan Lung, by something that somebody else told you?

A. Yes.

Mr. Belcher: Yes. That is all.

Redirect Examination

By Mr. Merges:

Q. Showing you what has been marked as Plaintiff's Exhibit 4, is this your little boy sitting up here on the pedestal in this group picture?

A. Yes, sir.

Q. And who is this man over here at the extreme right?

A. My nephew Lee Ging Lung.

Q. That is the applicant in this case. By Lee Ging Lung you mean Lee Gnan Lung, do you not?

A. Yes, sir.

Q. That is the same person?

A. Yes.

Mr. Merges: That is all.

(Witness excused.) [53]

LEE NGAN

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Merges:

Q. State your name, please?

A. Lee Ngan.

Q. How long have you lived here, Mr. Ngan?

A. Since I was brought over here. That was in 1940.

Q. You landed here in 1940? A. Yes, sir.

Q. You are the son of Lee Yick who just testified?
A. Yes, sir.

Q. Prior to the time you landed here in 1940, where did you live?
A. In China, sir.

Q. Did you live in your father's house in China?

A. Yes.

Q. Was that located in the same village where your uncle Lee Kut and your grandfather and grandmother lived?
A. Yes, sir.

Q. How far was your uncle, Lee Kut's house from your grandfather's house?

A. My father's house was the first house. [54]

Q. I didn't ask you that. How far was your uncle, Lee Kut's, house from your grandfather's house, or your grandmother's house?

A. My uncle's house from my grandmother's house? They were right next together.

(Testimony of Lee Ngan.)

Q. Now, your uncle, Lee Kut, did he have any children? A. Yes, sir.

Q. Did he have a son named Lee Gnan Lung?

A. Yes, sir.

Q. Did you live in the same village with that son from the time you were born?

A. Yes, sir.

Q. I show you a picture marked Plaintiff's Exhibit 4. In the middle of that picture is a small boy sitting on a pedestal. Who is it?

A. That is myself.

Q. Will you speak so that people can hear you?

A. That is myself.

Q. How old were you there?

A. Oh, six (6), I believe.

Q. About six (6)? A. Yes.

Q. How old are you now?

A. Now, I am eighteen (18).

Q. Do you have any recollection of when that picture was [55] taken? A. Yes.

Q. Inviting your attention to the man, or the boy on your left, or on the right looking at the picture, who is that?

A. That is Lee Gnan Lung, my cousin.

Q. Will you speak so that people can hear you?

A. That is Lee Gnan Lung, my cousin.

Q. And he is the son of your uncle, Lee Kut?

A. Yes.

Q. Now, is he an adopted boy? A. No.

Q. Is there any doubt but what this boy is your

(Testimony of Lee Ngan.)

cousin and the son of Lee Kut? Is there any doubt in your mind of that? A. None whatsoever.

Q. What are you doing now?

A. I am attending high school at Garfield.

Mr. Merges: You may inquire.

Cross-Examination

By Mr. Belcher:

Q. When did you say this picture——

Mr. Belcher: Exhibit 4, is it?

Mr. Merges: Yes, Exhibit 4.

Q. (By Mr. Belcher) (Continuing): ——when was that taken?

A. That was taken just before I came to [56] America.

Q. Well, how long before you came to America?

A. I landed here or arrived here in 1940.

Q. And this picture, Exhibit Number 4, was taken how long, how many weeks, or months, before you came?

A. Well, sir, stating in weeks and months I would not know because I was only six (6) then. I would imagine closely—not a very long time—before I came.

Q. Who took the picture?

A. A professional photographer.

Q. You don't know his name?

A. No, sir.

Q. Now the one in the center is you?

A. Yes, sir.

(Testimony of Lee Ngan.)

Q. And now when were you born?

A. February 23, 1935.

Q. So that you weren't born at the time Lee Gnan Lung was born, were you? He is older than you?

A. Yes.

Q. And who told you that he was your—related to you in any way?

A. My grandmother, my uncle, my father and my mother and the villagers.

Q. And that is the extent of your knowledge?

A. Also my grandfather.

Q. Now, in 1940, you were approximately six (6) years [57] old?

A. Yes, sir.

Q. When was it that you say your grandfather and your mother and your relatives told you that this boy was related to you?

A. As soon as I was capable of understanding.

Q. And how long would that be, do you think? Two (2) or three (3) years old?

A. Yes.

Q. Now, the only thing you know about the alleged relationship between the Plaintiff in this case and you is what somebody told you?

A. No.

Q. How else do you know?

A. That Lee Gnan Lung is my——

Q. (Interposing): What?

A. (Continuing): ——that Lee Gnan Lung is my cousin because when I was a small boy he used to play with me.

Q. Well, you played with other boys, didn't you?

(Testimony of Lee Ngan.)

A. Yes, but he as a big brother to me.

Q. He is a big brother to you? Well, did you have any other Chinese boys that played with you that were big brothers to you?

A. Yes, but not big brothers and blood relatives.

Q. Well, you are just assuming that.

A. Yes.

Q. You know nothing about it of your own personal knowledge? [58]

A. Of what, sir?

Q. Now——

The Court: He said of what?

Mr. Belcher: I beg your pardon.

A. No knowledge of what, sir?

The Court: He didn't understand your last question.

Mr. Belcher: I misunderstood.

Q. (By Mr. Belcher): You don't know anything about the relationship between yourself and Lee Gnan Lung except what somebody else told you?

A. And Lee Gnan Lung himself.

Q. Well, how does he know; do you know?

A. You mean how does he know——

Q. You don't even know of your own personal knowledge of when you were born, do you, except what somebody else told you?

A. Well, when a baby is born, I don't think he would know.

Q. Did you ever get a birth certificate?

A. Myself?

Q. Yes. A. No.

(Testimony of Lee Ngan.)

Q. How old was Lee Gnan Lung when you left China to come to the United States?

A. Well, then I was six (6) and he is nine (9) years my senior. [59]

Q. You talked this thing over with your parents and others connected with this case as to what your testimony was going to be here, haven't you?

A. Are you referring that I am told what to say?

Q. No, I am asking you if you talked it over with anybody?

A. Well, yes, we talk about the family all the time because the Chinese family is very closely related.

Q. And you discussed what your testimony was going to be here with them, did you not?

A. About——

Q. (Interposing): About what you were going to testify to in this case.

A. Here?

Q. Yes.

A. Well, just what I know of him, Lee Gnan Lung.

Mr. Merges: He discussed it with the Plaintiff's attorney too, Mr. Belcher.

The Witness: Yes.

Mr. Merges: In some detail.

Mr. Belcher: That is all.

Mr. Merges: You may step down.

Mr. Belcher: Wait a minute.

Q. (By Mr. Belcher): Have you made any

(Testimony of Lee Ngan.)

trips back to China since you came here in [60]
1940? A. No, sir.

Q. You haven't been out of this country?

A. No, sir.

(Witness excused.)

Mr. Merges: Lee Hing. [61]

LEE HING

upon being called as a witness for and on behalf of
the Plaintiff, and upon being first duly sworn, tes-
tified as follows:

Direct Examination

By Mr. Merges:

(Through the Interpreter previously sworn.)

Q. What is your name, address and occupation,
please.

A. Lee Hing. I don't work now. I work at
grocery sir.

Mr. Merges: Maybe you can testify in English.
Do you want to try?

The Interpreter: He is going to testify in Chi-
nese to be more accurate.

Q. (By Mr. Merges): How old are you?

A. Seventy (70).

The Court: Did you get the name?

The Interpreter: Lee Hing.

Q. (By Mr. Merges): What is your occupa-
tion? A. He is more or less retired now.

(Testimony of Lee Hing.)

Q. What was your occupation before retirement?
A. Groceryman.

Q. Did you have occasion to visit China in the last few [62] years?

A. Since 1939 he hasn't been back.

Q. Did you make a trip to China in 1939?

A. Back to States.

Q. No, did you make a trip to China in 1939?

A. No, he wasn't.

Q. Pardon?

A. He is on his way back to the United States at that time.

Q. What time? Just ask him when he was last in China. Maybe we can simplify it.

A. He was in China in 1934 to '39.

Q. 1934 to 1939?
A. That is right.

Q. Now, during that time did you ever visit Lee Kut's house?
A. No, he hasn't.

Q. You never visited Lee Kut's house?

A. No, he hasn't.

Q. Do you know Lee Kut's family in China?

A. He knew Lee Kut's family because he was a visit—I mean Lee Kut's father visit him at one time.

Q. Did you ever see any of Lee Kut's children?

A. He said he have seen Mr. Lee Kut's son on several occasions.

Q. When did you see Lee Kut's son the last time? [63]

A. About fourteen (14) years ago.

Q. About fourteen (14) years ago. Showing you

(Testimony of Lee Hing.)

what has been marked Plaintiff's Exhibit 4, I will ask you if you can identify any of the persons in that picture?

A. He said he can recognize two (2) of those in the picture.

Q. Who are they?

A. One is Ngan, the fellow who testified before he did.

Q. Which one is he referring to when he said one is Ngan?

A. The small boy sitting on the pedestal.

Q. That is the small boy who just testified?

A. That is right.

Q. And who is on the extreme right?

A. In the dark clothes, Mr. Lee Gnan Lung.

Q. You weren't there at the time Lee Gnan Lung was born, were you? A. No, he wasn't.

Q. So the only thing you know about whether or not Lee Gnan Lung is Lee Kut's son is what somebody else told him?

A. He knows because his grandfather introduced him as his grandson.

Q. His grandfather introduced him as his grandson? A. Yes.

Q. Ask him if he is familiar with the customs in China? [64] A. Not too much.

Mr. Merges: All right; that is all.

Mr. Belcher: No questions.

(Witness excused.)

Mr. Merges: Lee Yick's wife. [65]

TOY SHE

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Merges:

(Through Interpreter)

Q. What is your name, please?

A. Toy She.

Q. Are you Lee Yick's wife? A. Yes.

Q. And Lee Yick is the brother of Lee Kut?

A. Yes.

Q. When were you married to Lee Yick?

A. She was married on the date of the Chinese Republic 17 years.

Q. That is 1928, isn't it?

A. All she remembers is 17 years of the Chinese Republic. That is all she knows.

Mr. Merges: I think we can stipulate it is 1928.

Mr. Belcher: Yes.

Q. (By Mr. Merges): When you were married to Lee Yick, did you meet all of Lee Yick's family?

A. Yes, she did.

Q. And did you live in the same village with Lee Kut's [66] family? A. Yes.

Q. (Continuing): After you were married?

A. Yes.

(Testimony of Toy She.)

Q. State whether or not Lee Kut had any children? A. She has one (1), Lee Gnan Lung.

Q. And showing you what has been marked Plaintiff's Exhibit 3, is that Lee Kut's son?

A. Yes.

Q. How long did you live in the same village with this boy?

A. She says she lived in the same village with Mr. Lee Gnan Lung from the date of her marriage until her departure to the United States.

Mr. Merges: You may inquire.

The Court: Did she say when she came to this country?

The Interpreter: In the Chinese Republic, the 36th year.

Mr. Merges: That is 1948.

Mr. Belcher: 1947.

Mr. Merges: 1947.

The Court: Ask her if he was there when she left?

The Interpreter: She said Mr. Lee Gnan brought her out to Hong Kong. [67]

In other words, it is a custom to bring women folk out from the village to the big cities and he was the one who brought her out in preparation for the trip to the United States.

Mr. Merges: That is all.

(Testimony of Toy She.)

Cross-Examination

By Mr. Belcher:

Q. You don't know of your own knowledge that Lee Gnan Lung is the son of Lee Kut?

A. She said that she knows. She said she knows that not as far as her knowledge is concerned, but she knows he is her son.

Q. How does she know that?

A. She said Mrs. Lee Kut told her.

Q. That is the only—you weren't there at the time that the child was born?

A. Not yet. She wasn't married then.

Q. You have never seen any birth certificate issued by the Chinese? A. No.

Mr. Belcher: That is all.

Mr. Merges: That is all.

(Witness excused.)

Mr. Merges: That is our case, if your Honor please.

Mr. Belcher: May I have the last witness back for just a moment? [68]

The Court: The last witness may come back.

(Witness resumes stand.)

Q. (By Mr. Belcher): Did I understand you to say that you met all of Lee Kut's relatives, met Lee Kut, at your wedding in 1928?

A. Yes, she says she knows Mr. Lee Kut after or during her marriage.

(Testimony of Toy She.)

Q. Don't you know that Lee Kut was not in China in 1928?

A. She was introduced to Mr. Lee Kut's wife and his immediate family, but not Mr. Lee Kut himself.

Q. Mr. Lee Kut was in the United States at that time, was he not?

A. Yes, she heard that he was in the United States at that time.

Mr. Belcher: That is all.

Mr. Merges: That is all. Step down.

(Witness excused.)

Mr. Merges: That is our case, if your Honor please.

The Court: You have no proof.

Mr. Belcher: No, your Honor.

I think the evidence is wholly insufficient to grant the relief prayed for.

It is based entirely upon hearsay. No direct evidence at all of the birth of this child and, further than that, it seems strange [69] that no effort was made to bring this alleged child to the United States until he reached the age of twenty-seven (27) years, although there was plenty of opportunity to do so.

The Court: I might ask you this, Mr. Belcher:

What testimony do you think there would be to establish the birth?

Mr. Belcher: I think, if your Honor please, that this is one case in which the blood grouping test would be proof positive, and before this case is de-

etermined by your Honor, if in the event of our denial of the motion to dismiss because of the lack of sufficient evidence, that the Court in this case should order a blood grouping test, particularly in view of the fact that one of the witnesses testified here it is the Chinese custom to adopt and take in children.

The Court: It is the custom in this country to do that too.

Mr. Belcher: I realize that. I say, there is no direct evidence here at all that this man is the father of this child. It is all hearsay, every bit of it.

The Court: Isn't that true of most people except where you have birth certificates?

Mr. Belcher: Pardon?

The Court: Isn't that true in most cases except where you have birth certificates?

Mr. Belcher: No. I think, as your Honor knows, in some of these Chinese cases they have introduced birth certificates. [70]

The Court: What if they haven't any?

Mr. Belcher: The burden is upon them; not us.

The Court: The Court thinks it is proved and grants the Petition.

Mr. Belcher: I didn't hear.

The Court: The Court thinks the proof is sufficient.

Mr. Belcher: And the Court refuses to order——

The Court: (Interposing) I see no occasion to order it unless you have some other showing than guess work. I don't think it is sufficient to say lack

of a birth certificate is proof of your position. There is nothing else you have offered at all.

Mr. Belcher: Well, there is no showing here, if your Honor please, and there has been no positive proof here, of citizenship, and the burden is entirely upon the Petitioner.

The Court: I grant that, but the statute provides for this action. What kind of proof is the Court supposed to have? The Court realizes that there can be situations where a person is an imposter and not a true son, but at the same time is the Court to listen to witnesses and assume that they are not telling the truth?

Maybe the Court is under some misapprehension and maybe the statute should be changed, but when an action like this is filed and these people get on the stand and they are citizens and they take the oath and the presumption is that they understand then they testify, granted it is hearsay, but there are many, many people, most [71] of the people in the world, whose birth must be proved by hearsay, and that type of hearsay testimony is acceptable.

Mr. Belcher: The father and mother are the only two (2) people that could testify to that.

The Court: The father can't testify if he isn't there and the mother is dead.

The fact that the mother died—the Court doesn't wish to get into a debate, but it appears to the Court that if the mother is dead—and there is no other person who can testify of personal knowledge, whether it be a doctor or midwife, whoever it may be, you say that that isn't sufficient showing; or, on

the part of the Government in a case of this character, merely to show that there is no one else who can say that they know that the son——

Mr. Belcher: Well, I would like to have the record show that I ask the Court, under Rule 35, for a blood test, a blood grouping test, which would be proof positive of the lack of parentage, and that is our defense here—that there is no identification. This would be a very good case to have the Court of Appeals determine.

The Court: I think it may be. I think in regard to your last motion the record may so show. I think it is not timely and the Court will say that the testimony is not such as to warrant the Court, on its own motion, to ask for that test.

Frankly, I will say this: These cases are a problem to the Court. Recognizing that situations may present themselves where persons other than sons of citizens will contend to be such, [72] unless the Government has something more to establish that, I don't think the Court is in a position to presume that these witnesses are not telling the truth.

Mr. Belcher: Of course, I go on the hearsay.

The Court: We will recess until two (2:00) o'clock.

(Whereupon, at 12:10 o'clock, p.m., a recess was had until 2:00 o'clock p.m., October 22, 1952, at which time, Counsel heretofore noted being present, the following proceedings were had, to wit):

Mr. Belcher: Before your Honor signs that, I would like to call your Honor's attention to Judge

Roche's decision. It isn't in the advance sheets.

The Court: I assume this order was entered, Mr. Belcher, upon a motion and not upon conclusion of the testimony of the Plaintiff.

Mr. Belcher: As I explained to your Honor this morning, when we were discussing this matter yesterday, Mr. Merges and I, I understood that the grandmother was in China at the time of the birth of the child and would have first-hand knowledge of the birth. It developed for the first time this morning that she wasn't there until two (2) years afterwards and I made my motion at the first opportunity.

The Court: Well, it would appear to me, Mr. Belcher, that the testimony given in this matter this morning, there [73] having been no Answer, the Court recognizing that the Petitioner in all these cases has the burden of establishing his identity, that the proof is sufficient to establish a prima facie case, if not to establish conclusively the identity, and if the only thing that the Government would have in opposition would be possible evidence that may result from physical examination or blood grouping test, as I understand——

Mr. Belcher: That is correct, your Honor.

The Court: (Continuing) ——that wouldn't be sufficient to warrant the Court's delaying in making a finding on the evidence as adduced, recognizing that in these paternity cases, or in establishing birth, that hearsay is acceptable. I haven't checked the law on it, but it is my recollection that hearsay is acceptable, or, it is not subject to the ordinary

objection that it may be hearsay testimony, when it relates to the birth of a child. Isn't that correct?

Mr. Merges: That is correct, your Honor.

Mr. Belcher: In the ordinary case, I think that is the rule.

The Court: So that the testimony is admissible and recognizing that we had the alleged father and alleged grandmother and alleged uncle and cousin and aunt—

Mr. Merges. (Interposing) And nephew.

The Court: (Continuing) —and nephew, all having been over to China and having seen this individual, it would seem to the Court that that is rather persuasive testimony, unless there is something to show that it is falsified. [74]

Mr. Belcher: That is the purpose of the blood grouping test. Blood grouping tests will disprove paternity but it will not prove it.

The Court: I understand that. I am not familiar with how reliable it is, but I am familiar with the theory.

Mr. Belcher: I just thought I would call it to your attention.

The Court: The record may show that you make the request but if the testimony as given this morning is not sufficient I think that the Court should know about it on appeal.

Mr. Belcher: I think so too. I think this is a very good case to test out and have a ruling from the Court of Appeals.

The Court: The Court certainly isn't an expert in these Chinese cases but still I think the testi-

mony of the Chinese citizen is entitled to the same credibility as any other person.

Mr. Belcher: Off the record, I might say for your Honor's information that there have been a great many frauds found in California in these Chinese cases and there is a considerable backlog of them.

The Court: That may be true. I am aware of the magazine articles and so on, but I don't think the Court could take judicial notice of that and order blood grouping tests. We had this down for pre-trial. I think when they want that that that should be requested at the pre-trial.

Have you checked the form of this [75] judgment?

Mr. Belcher: Yes.

There was no pre-trial in this case.

The Court: I would suggest that if the Government wishes that, then they should ask it at the time of pre-trial.

Mr. Merges: I think, if your Honor please, with regard to the blood grouping test, when the motion is made on that and the issue is properly presented to the Court, I will present the authorities, but there is a very serious question as to whether or not the Court can properly order it, but that hasn't been presented in this case.

The Court: The Court has had one motion and referred action on that to pre-trial in another case.

Mr. Belcher: That is right.

(Whereupon, hearing was concluded.) [76]

Certificate

I, Earl V. Halvorson, official court reporter for the within-entitled court hereby certify that the foregoing is a full, true and correct transcript of matters therein set forth.

/s/ EARL V. HALVORSON.

[Endorsed]: Filed February 9, 1953. [77]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, I am transmitting herewith all of the original documents and papers in the file dealing with the above-entitled action as the record on appeal herein (excluding exhibits) from the Decree and Adjudication of Citizenship, to the United States Court of Appeals for the Ninth Circuit at San Francisco, California, said papers being identified as follows:

1. Complaint, filed Feb. 19, 1952.

2. Marshal's Return on Summons, filed Feb. 20, 1952.

3. Marshal's Return on Service of Summons, filed Mar. 3, 1952. (Secretary of State)

4. Appearance of J. Charles Dennis and John E. Belcher as Attorneys for United States, filed Mar. 21, 1952.

5. Motion of Plaintiff and Affidavit for an Order to Show Cause, filed Mar. 21, 1952.

6. Order to Show Cause, filed Mar. 21, 1952.

7. Marshal's Return on Order to Show Cause, filed Apr. 4, 1952.

8. Marshal's Return on Service (Sec. of State) of Order to Show Cause, filed Apr. 14, 1952.

9. Return to Order to Show Cause, filed Apr. 25, 1952.

9-A. Defendant's Memorandum, filed May 2, 1952.

10. Order Directing Defendant to Issue Travel Document in Accordance with Section 503 of the Nationality Act of 1940, filed May 5, 1952.

11. Marshal's Return on Service of Order Directing Defendant to Issue Travel Document in Accordance With Section 503 of the Nationality Act of 1940, filed May 19, 1952.

12. Defendant's Motion for Stay or Recall of Order, filed July 2, 1952.

13. Order Upon Motion to Stay, filed July 14, 1952.

14. Order to Show Cause, filed July 14, 1952.

15. Affidavit in Support of Motion for Order to Show Cause, filed July 14, 1952.

16. Marshal's Return on Service of Order to Show Cause, (Sec. of State) filed July 29, 1952.

17. Findings of Fact and Conclusions of Law, filed Oct. 22, 1952.

18. Decree and Adjudication of Citizenship, filed Oct. 22, 1952.

19. Notice of Appeal, filed Dec. 18, 1952.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal in this cause, to wit:

Notice of Appeal, \$5.00,

and that said amount has not been paid to me for the reason that the appeal in said cause is being prosecuted by the United States.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 21st day of January, 1953.

[Seal]

MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 13695. United States Court of Appeals for the Ninth Circuit. John Foster Dulles, Secretary of State of the United States of America, Appellant, vs. Lee Gnan Lung, by his next friend Lee Kut, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 23, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13695

DEAN C. ACHESON, Secretary of State of the
United States of America,

Appellant,

vs.

LEE GNAN LUNG, By His Next Friend LEE
KUT,

Appellee.

CONCISE STATEMENT OF THE POINTS ON
WHICH APPELLANT INTENDS TO RELY

Appellant hereby adopts the concise statement of points to be relied upon on appeal heretofore filed with the Clerk of the District Court for the Western District of Washington.

Dated at Seattle this 10th day of February, 1953.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed February 14, 1953.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF
RECORD

Appellant hereby designates the following from the record to be printed:

1. Complaint.
2. Motion and affidavit for order to show cause.
3. Order to show cause.
4. Return to order to show cause.
5. Order directing defendant to issue travel document.
6. Affidavit of Edwards E. Merges dated July 14, 1952.
7. Motion for stay or recall of order directing issuance of travel document.
8. Order denying motion for stay.
9. Findings of Fact and Conclusions of Law.

10. Judgment.
11. Notice of Appeal.
12. Concise statement of points on appeal.
13. Designation of record to be printed.
14. This designation of record.
15. Reporter's transcript of the testimony.
16. Stipulation and order transferring exhibits.
17. Concise statements of points on appeal, this Court.
18. Stipulation and order for substitution of John Foster Dulles as appellant.

Dated this 10th day of February, 1953.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed February 14, 1953.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER FOR SUBSTITUTION OF PARTY APPELLANT

It is hereby agreed by and between counsel for appellant and appellee that Dean G. Acheson has resigned as Secretary of State of the United States

of America and John Foster Dulles has been appointed and has qualified and is now the Secretary of State of the United States of America, wherefore

It Is Hereby Stipulated that the said John Foster Dulles be substituted as appellant herein in the place and stead of said Dean G. Acheson.

Dated this 10th day of February, 1953.

/s/ J. CHARLES DENNIS,
United States Attorney,

/s/ JOHN E. BELCHER,
Assistant United States
Attorney.

/s/ EDWARDS MERGES, LMG,
Attorney for Appellee.

Order

Upon the foregoing stipulation, it is Ordered that John Foster Dulles be, and he is hereby, substituted for Dean G. Acheson, as appellant herein.

/s/ CLIFTON MATHEWS,

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,

Judges, U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed February 17, 1953.